IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5685 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PB SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR DC RAWAL for

MR MR ANAND for Petitioner No. 1

MR BY MANKAD AGP for Respondents No. 1-2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 24/12/2001

ORAL JUDGEMENT

This petition has been filed for treating and also for quashing and setting aside the impugned orders Annexures - D & H as illegal, unconstitutional, without jurisdiction, null and void and no effect and also for a direction to the respondents to consider the case of the

petitioner for promotion to the post of Senior Administrative Officer with effect from April 1985 when his immediate junior Shri U.A. Jethi was promoted to the said post with all consequential benefits including fixation of pay, payment of arrears, fixation of retirement benefits and other dues to the petitioner togather with 18% p.a. interest.

2. The petitioner was retired on 1-10-1987 on attaining the age of superannuation i.e. 58 years while he was working under the respondent no. 2 in the capacity of the Administrative Officer, Class-II at the time of his retirement. The petitioner was promoted to the post of Administrative Officer on 7-10-1983. Prior to that time, the petitioner was working as Steward Office Superintendent since 1978. After his retirement, the petitioner was subjected to the penalty of 5% cut in his pension for an incident that took place in the year 1979-80, in September, 1978 while he was working as steward, which is equivalent to the post of Office Superintendent and as Cashier. The charge was given to the petitioner because there was some difficulty in the arrangement of receipt of money and making payment. The petitioner inspite of his objection has to accept the post as Cashier though there were several difficulties for the petitioner at the relevant time, there was no protection in case of some mischief. There was no counter for paying cashier or for receiving cash and the petitioner was surrounded by large number of public. He received memo on 21-8-1984 and the petitioner along with other four persons was chargesheeted. Mr. J.K. Dharani was a Senior Pharmacist. The charge against the petitioner was of negligence in not verifying before making payment, whether all the goods in question were received or not. There was no charge against the petitioner about lack of integrity or dishonesty on the part of the petitioner. After receiving the chargesheet the petitioner moved an application for supply of copies of certain documents for giving out his case in defence. Accordingly, out of 8 documents, the petitioner was given five documents but he was not given any copy of the documents out of eight documents. Even thought the petitioner filed his reply on 11-12-1984 pointing out that he had made payment to the parties concerned after he received proforma invoice dated 19-9-1979 for Rs.1,25,357-81 and by this document the petitioner was asked to make payment to the tune of 90?% of the dues. The bill was prepared and sent to the treasury office on 1-3-1980. The treasury issued the cheque dated 10-3-1980 for the same amount. The cheque was handed over to the party concerned on 11-3-1980 in the presence of the

Medical Officer (Stores), the Store Officer, Accounts Officer and Senior Pharmacist, who had assembled in the Chamber of Accounts Officer though it was demanded on 10-3-1980. The petitioner asked for clarification as to whether the payment should be made to the party concerned or not. Thereafter, the party approached the higher authority i.e. the Medical Superintendent who directed the petitioner to make the payment. So, the payment was made on 11-3-1980 as per specific direction of the Medical Superintendent. So far as the charge regarding rainbow was concerned, the petitioner pointed that there was no evidence in support of the charge as the charge contained one bill whereas the zerox copy was given to the petitioner pertaining to some other bill. The petitioner therefore requested that the charge may be dropped. The petitioner also required to give an opportunity to lead the evidence in support of the contention raised in his reply. During the inquiry, no witness was examined and the inquiry against the petitioner was concluded on the basis of incomplete and inadequate documentary evidence or record and without giving the copies of most of the relevant documents. The penalty of 5% cut in his pension as stated by the order dated 11-7-1988 after retirement of the petitioner was awarded. The petitioner filed his review application dated 22-8-1988 pointing out that the penalty has been imposed for the work which was not supposed to be done by the petitioner. The goods received were to be verified by the Store Officer, who has to verify whether the goods were supplied in accordance with the bills or not. Therefore, the petitioner cannot be penalized for the work of the Stores Department. If the bill is approved by the Stores Department and by the Accounts Officer and they forwarded it to the petitioner for making payment, the petitioner being a Steward would have no discretion in the matter except making the payment. The petitioner was penalized to the tune of Rs.150/- for the work that was not supposed to be done by the petitioner as a Steward. The Review Application filed by the petitioner was also rejected. The inquiry was not completed within a specified period of two years, the Government has to decide under the consultation with the Gujarat Public Service Commission. After the first meeting of the Departmental Promotion Committee ("DPC" for short) was held, the result for adhoc promotion of the petitioner was kept in the sealed cover and it was required to be placed for the next meeting of the DPC. As such, the petitioner was required to be promoted by opening the sealed cover in November - December, 1986 and he should be promoted with effect from April, 1985 when his immediately junior person was promoted to the post of Sr.

Administrative Officer. The petitioner made several requests for giving him the benefits but he did not receive any reply from the respondents. Hence the present petition is filed by the petitioner on that the ground that the departmental inquiry was held without furnishing the copies of most of the relevant documents for his defence. In spite of the fact several requests made by the petitioner for supply of copies of relevant documents, no copy of the relevant document was supplied to the petitioner and non-supply of the relevant documents is violation of Rule 9 of the Gujarat Civil (Discipline and Appeal) Rules 1971 (the "Rules" for short) . During the departmental inquiry, the petitioner was not given reasonable opportunity of being heard and hence the impugned orders Annexures - D and H, are not speaking orders and cannot be accepted in the eye of law. The copy of the inquiry report was not supplied to the petitioner. The impugned action of the respondents is vitiated by malafides by in a joint inquiry in view of the fact that the petitioner and other employees were tried for the charges levelled against the Store Officer and he was penalized by imposing 10% cut in his pensionary right particularly, the petitioner's contention is that the verification was the duty of the Stores Officer was accepted in respect of the other delinquent Stores Officers. The impugned orders passed against the petitioner are illegal and in violation of the principles of natural justice and contrary to provisions of Article 14 and 16 of the Constitution of India. The departmental inquiry against the petitioner was not completed within a specified period of two years as contemplated under the aforesaid Rules.

3. On behalf of the respondents, the under Secretary to the Government of Gujarat filed the affidavit-in-reply stating therein that the petitioner was working as a Steward and he had without verifying about the fulfillment of the conditions of contract by the contractor, made 90% payment to the party in absence of the certificate of goods received. The petitioner without necessary verification, made payment twice, firstly on 11-3-1980 to Strike Surgical Co. and secondly on 26-3-1980 to M/s. Rainbow Surgical Co. Had the petitioner verified in the earlier case, the Government would not have to suffer a loss for the second time and that was not only the negligence but gross negligence on the part of the petitioner. The petitioner made payment without applying his mind. The petitioner was supplied with copies of all the five documents listed in the letter dated 15-11-1984 and he was permitted to inspect the other relevant documents of the case. The copies of

8 documents were not listed in the charge sheet hence were not relevant to the case. The inquiry is a statutory procedure and that was entrusted to the independent and neutral officer. The petitioner again raised new issue which was not raised during the departmental inquiry. The departmental inquiry was based on the record and there was no question to examine any witness. The petitioner could have produced the witness if he desired but he had not examined any witness. He was permitted to see the documents personally. All the facts have been considered during the departmental inquiry. During the departmental proceedings, all the submissions made in defence written and oral submissions made before the Special Officer of the departmental inquiry were considered and hence no question of review arises. The petitioner was communicated vide letter dated 5-5-1989 upholding the penalty imposed on him and that was a communication and not an order that is not required to be a speaking order. Penalty awarded to the petitioner is less than the loss the Government has to suffer. It was not necessary for the Government to issue show cause notice along with the inquiry report to the delinquent before the final order of punishment is awarded to the petitioner. The proportionate penalty has been awarded to the petitioner. The order dated 11-7-1988 of punishment is legal, constitutional and proportionate against the loss suffered by the Government due to the petitioner's negligence.

4. I have heard the learned counsel for the parties at length and perused the relevant material on the record. The learned counsel produced the translated copy of the charges levelled against the petitioner which reads as follows :

"Shr P.B. Solanki, Administrative Officer, Dental College, Ahmedabad during the period from 28-9-1979 to 28-11-1980, when he performed his duty as Steward at Civil Hospital, Ahmedabad, so as to purchase Absorbent Bandage Cloth and Absorbent Gauze Cloth, supply order was given to M/s. Starle Surgical Dressing Company, Ahmedabad and M/s Rainbow Surgical Dressing Company, Ahmedabad. From this supply order, some of the goods were not received within the prescribed time limit, which has financial loss to the Government. For this reason, charge has been framed against you, which are as under :

The Medical Superintendent, Ahmedabad has placed the order for 4000 packets of Absorbent

Gauze Cloth vide supply order No. 37507 - 10 dated 15-10-1979. Against this, a Proforma Invoice dated 19-7-1979 of Rs.1,126,357.81 was presented for 90% advance payment to the Company and a cheque of Rs.1,25,357-81 by Treasury Bill No. 2925 dated 10-3-1980 was given to the Company before receipt of 4000 packets of absorbent Gauze and without a certificate received from Senior Pharmacist or Store Incharge Medical Officer, and make the payment of Rs.37,748.21 to the Company and thereby caused financial loss to the Government by negligence in the duty.

The Medical Superintendent, Ahmedabad has placed an order for 5000 packets of absorbent Gauze by supply order No. 6927-30 dated 5-3-1980. Against this, a Proforma Invoice dated 6-3-1980 of Rs.47,029.27 was presented for 90% advance payment to the Company and a cheque of Rs.47,029.27 by Treasury Bill No. 2560 dated 25.3.80 was given to the Company, before receipt of 5000 packets of Absorbent Gauze and without a certificate received from the Senior Pharmacist or Store Incharge Medical Officer and make the payment of Rs.47029.27 to the Company and thereby caused financial loss to the Government by his negligence in duty."

5. From the above charge-sheet it appears that some of the goods were not received within the prescribed time limit and some financial loss was caused to the Government and it is stated that the petitioner without having certificate received from Sr. Pharmacist or Store Incharge Medical Officer and made payment of Rs.37,748-21 to the Company and thereby financial loss was caused to the Government by negligence of the petitioner. It is stated that the petitioner before receipt of the goods and without having certificate received from Sr. Pharmacist or Store Incharge Medical Officer and made payment of Rs.47,029.47 to the Company and thereby caused financial loss to the Government by his negligence in duty. On the basis of the aforesaid charges, the petitioner has been charged for the negligence in duty without having certificate of Store Incharge Medical Officer made payment to the Company concerned. Learned counsel for the petitioner referred to two documents i.e. page - 12 which formed part of the bill dated 19-11-1979 for Rs.1,25,357-81. On the back side of the document, the amount has been verified by the Medical Officer I/c. Medical Store, Civil Hospital, Ahmedabad and the Store

Officer, Civil Hospital, Ahmedabad has also verified the signed the same. Not only that, the Account Officer (Illegible) Civil Hospital, Ahmedabad has also verified and signed the same. In the same manner, he also brought to the notice of the Court the other documents dated 8-9-1980 with regard to the payment of the amount of Rs.47,029/- and on the back side of that bill, it is is found that the same is verified and signed by the Medical Officer, In/charge Medical Store, Civil Hospital, Ahmedabad. In the same way, the Store Officer, Civil Hospital, Ahmedabad has also signed and dated. The Account Officer has also signed the said document. Thereafter, these bills were sent to the petitioner for making payment of the aforesaid amounts to the parties concerned. From the charge, the petitioner was required to have certificate from the Store Incharge Medical Officer. In the present case, both the bills have been verified, signed and dated by the Store, Incharge Medical Officer. Hence, it cannot be said that the petitioner without having verification of the signature, certificate of the Store, Incharge Medical Officer, made payment to the parties concerned. Both the bills have been certified and signed with date of the Store, Incharge Medical Officer. Thus, apparently, the charges levelled against the petitioner for negligence in making payment without verifying certificate from the Store, Incharge Medical Officer is not sustainable in the eye of law.

6. The next contention of the learned counsel for the petitioner is that the Medical Superintendent of Civil Hospital, Ahmedabad who was the highest authority in the Civil Hospital, gave directions to the subordinate authority and if that direction is not followed by the subordinate authority then it would amount to violation or breach of the orders of the higher authority and that would be misconduct of the service conditions. In the present case, vide letter dated 26-11-1979 the petitioner has been directed to make payment to the concerned parties and that direction is on page 94 of the paper book of this case. The Medical Superintendent, Civil Hospital, Ahmedabad also admitted that in the letter dated 21-5-1980 on page 92 of the paper book that the hospital has already paid 90% amount on 11-3-1980 for Rs.1,25,357/- and the payment was made as per the directions of the Medical Superintendent, Civil Hospital, Ahmedabad on their personal request, yet the order of the goods is still pending and the goods have not been supplied to the hospital. From this letter, it appears that the payment was required to be made at the request of the party concerned. The petitioner was required to make payment by the Medical Officer, Civil Hospital,

Ahmedabad. As such, the payment to both the parties were made as per the directions of the aforesaid Medical Superintendent, Civil Hospital, Ahmedabad. I have carefully considered the documents referred to by the learned counsel for the petitioner. Other documents have also been filed by the petitioner in order to show that it was not the duty of the petitioner to make physical verification of the goods from the Store, Incharge Medical Officer. Only for that purpose, the petitioner was required to have verification of the certificate of the Store, Incharge Medical Officer, for making payment to the concerned parties. In the present case, after recommendation and certificate signed by three authorities i.e. Medical Officer, Store Incharge Medical Officer and Account Officer, Civil Hospital, Ahmedabad, the petitioner made payment to the parties concerned hence he cannot be said to be responsible for negligent conduct of those authorities or the Officers of Civil Hospital, Ahmedabad. It was the duty of the petitioner to make payment to the parties concerned on having certificate of verification and as per the directions of the higher authorities and those directions appear to have been made by the Superintendent of the Civil Hospital, Ahmedabad. As such, the petitioner cannot be held liable for the mistake committed by any other officer of the Civil Hospital, Ahmedabad. The petitioner is not responsible or liable under any duty prescribed by any Rules and Regulations and he has made payment to the parties concerned as per the directions of the higher authorities and accordingly he has done so which does not amount any misconduct or negligence on the part of the petitioner.

7. From the assertions made in the affidavit-in-reply, it appears that the petitioner has made payment twice for the goods which were not supplied to the hospital by the parties concerned within the time limit. But these assertions appears to be misleading and the petitioner has not made payment twice for the same goods as alleged. Secondly, the Government cannot be said to have suffered any loss in case some advance payment has been directed to be made by the Superintendent of Civil Hospital, Ahmedabad. The parties are required under the terms and conditions of the contract to have furnished bank guarantee for security of the amount and in case over payment has been made or payment has been made but no goods have been supplied, the Government can realize the same from the bank guarantee deposited by the party concerned or the amount can be recovered from the other means or manner by the hospital but it cannot be said that financial loss has

been caused to the Government at the instance of the petitioner. Moreover, in the present case, the Medical Officer, Incharge, Medical Store, has been awarded penalty of 10% cut in pension as it was primary duty of the Medical Officer, Incharge Store, to verify physically as to whether the goods have been supplied or not for which the payment is required to be made. In the instant case, the petitioner was not required to make physical verification of the goods as to whether the goods have been supplied or not for which payment is required to be made. The petitioner is required to have certificate from the Store, Incharge Medical Officer, on the basis of the documents stated above, if the petitioner finds signature with date and seal and that verification is required to be made by the authorities concerned and if the petitioner has made payment to the parties concerned, the petitioner cannot be held responsible for negligence of other officer who are responsible therefor. In this manner, I find that punishment order is not passed on the basis of any documentary evidence moreover is perverse. Hence, the impugned orders deserve to be quashed and set aside by this Court.

8. Accordingly, this petition is allowed and the impugned orders Annexures - D and H are hereby quashed and set aside. The respondents are directed to make payment of 5% cut in pension of the petitioner for five years to the petitioner which was made as per the directions of the impugned orders. The respondents are directed to calculate the actual amount of 5% cut in pension of the petitioner as if no order of punishment is passed by the authority concerned. If the petitioner was not entitled to the promotion that has not been considered by the respondents due to pendency of inquiry. The respondents are directed to consider all consequential benefits of promotion etc. in accordance with law. So far as promotion of the petitioner is concerned, if the petitioner is entitled to the promotion as if no order of punishment is passed, will be considered by the respondents and the respondents shall pass appropriate order in this respect within period of three months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/